

Industri-Plex:

Superfund Attorneys Make Site Reuse Possible



EPA cleans up the Industri-Plex Superfund site.



Acres of wetlands co-exist with the new commercial and retail district on the former site.



New developments, such as this retail store, change the face of Industri-Plex, build the economic base, and restore community pride.

“Development is going to happen.

For me, I’m thrilled that it is going to happen on a site that was formerly used as industrial or commercial property and is going to be used again, rather than them setting up a new shopping center 30 miles out, which would involve plowing up farm land or cutting down a forest.”

Dan Winograd
Superfund Site Attorney

This is the story of how an EPA site attorney and the Industri-Plex team helped turn the nation’s fifth worst hazardous waste site into a booming retail, commercial, and transportation center with a wetlands preserve. There are more than 190 successfully reused Superfund sites around the country. These reuse projects often raise new and multifaceted issues that require innovative and dynamic attorneys to find creative solutions. This fact sheet highlights one site attorney’s role in the cleanup and reuse of the Industri-Plex site. It is one in a series of fact sheets that describe how EPA site attorneys are making cleanup and site reuse possible.

Industri-Plex

Industri-Plex was a 245-acre industrial park located in Woburn, Massachusetts, 12 miles north of Boston. Since 1853, it has been the home of various chemical-manufacturing operations that contaminated the soil and groundwater. Industrial activities ceased at the site in 1969, and the property was sold for development. In the late 1970s, the community protested when development activities caused strong odors from unearthed wastes. This development ended in 1980. In 1983, Industri-Plex was added to the National Priorities List (NPL). Since then, under EPA direction, a group of companies has cleaned up this former toxic waste site and EPA attorneys have helped make it the location of new businesses, commuter facilities, wetlands, and access roads — all adding to the economic vitality of the Woburn community. The reuse of Industri-Plex provides as many as 4,300 permanent jobs, approximately \$147 million in annual income associated with those jobs, and a \$4.6 million potential increase in residential property values within two miles of the site. This success took the combined efforts of Superfund Site Attorney Dan Winograd, Remedial Project Manager Joe LeMay, and many other federal, state, and private parties.

Untangling the Legal Web – Multi-Party, Multi-Practice

Communities, developers, and lenders – often deterred by the apparent web of legal hurdles and liability issues surrounding reuse – need skilled and motivated attorneys to untangle the web and lead them to the new paradigm of Superfund site reuse. A number of site attorneys have stepped forward to help untangle this web. Their contribution has ranged from removing procedural obstacles to leading multiple-party negotiations to make site reuse happen. Their venture has not only reshaped the landscape, it has given them a keen sense of mission fulfillment and career development.

They report mission fulfillment because the site is cleaned up and greenfields are preserved, as new development is steered toward the former Superfund site. Urban sprawl is discouraged and smart growth

encouraged because the redevelopment occurs in areas where city infrastructure already exists. Communities are revitalized as former toxic waste sites are replaced by stores, parks, office clusters, and soccer fields – to name only a few of the community-supported uses.

On a personal level, site reuse presents an attorney with new issues, new subject areas, and a whole new set of players. The attorney is challenged to think innovatively, strengthen existing skills, and learn new skills.

Meeting the Challenge

Dan Winograd is one EPA site attorney who met the challenge by working in collaboration with public and private partners and thinking “outside the box” to make site reuse possible.

The cleanup and development of Industri-Plex “posed new problems which needed to be worked out,” says Winograd. But to work out these new problems, he had to solve some pretty big issues.

For example, who would foot the bill? The developer who owned half the site was bankrupt. Although the developer offered the land as his contribution to cleanup costs, until cleanup was complete it could not be sold. But who would hold and manage this property before the sale, and where would the money come from needed to promote development?

One solution found by the site attorney who preceded Winograd, Greg Kennan, and his counterpart at the Department of Justice, Bill Brighton, was a Custodial Trust with the potentially responsible parties (PRPs) creating an interest-free revolving loan fund. The Trustee could borrow money from that fund to prepare parcels for redevelopment and then repay the loan when the parcels were sold. Proceeds from the sales were distributed to the beneficiaries of the Trust: EPA, Massachusetts, Woburn, and the PRPs. In September 1989, shortly after the consent decree was entered, Winograd took over as site attorney and oversaw the implementation of that Trust. This type of trust had never been implemented at a Superfund site. In addition, there was redevelopment activity on the half of the site still privately owned. Throughout the site, it was extremely important to coordinate remediation and reuse and to address the concerns of the developers and prospective owners, particularly concerns about liability.

Solutions such as these did not come easily. According to Winograd, they were preceded by challenging and complex negotiations that required continuous interaction with a large number of diverse players, including PRPs, the Custodial Trust, the city government, community factions, land owners, new developers, state agencies, future tenants, and lenders. Practical and legally proper solutions needed to be created to satisfy multiple needs.

A Total Learning Experience

To devise these solutions, Winograd had to learn new areas of law, such as bankruptcy law. “There are also many local ordinance issues to learn,” says Winograd.

While the law library was sometimes helpful, most of the learning was hands-on. “I talked to the PRPs’ attorneys, the developers’ attorneys, and city attorneys to understand from their perspective what their concerns were and how we could address them,” says Winograd. He asked: “Help me understand the issues, so I can figure out how to help you from the federal government’s perspective, because this is an area we don’t typically get involved with.”

Winograd also helped move the prospective purchaser agreements (PPAs) along more quickly and worked with a developer to create a standardized checklist so PPA protections could be more easily assigned when new tenants move into a space. The first PPA at Industri-Plex took 16 months to complete and the most recent PPA (the fifth PPA at Industri-Plex) took only three months to complete.

Winograd and the Industri-Plex team worked with a multitude of officials, entrepreneurs, and citizens to help them understand what was going on at the site. “Any time we saw an obstacle, [we would] figure how [to] help the developer or the owner over the problem.” Helping to put it all together was very satisfying, says Winograd, “It’s been a total learning experience.”

Innovating Institutional Controls

But the satisfactions of getting involved with site reuse are not limited to learning new areas of law. Innovative legal instruments needed to be crafted to protect human health and the environment while allowing development to move forward. Therefore, the Industri-Plex partners have been working together to create new, more flexible institutional controls (ICs).



Internet infrastructure supplier Genuity is one of the tenants of the new Metro North Corporate Center.

ICs have been around since the first days of Superfund. In situations like Industri-Plex, where contaminated materials are contained on site, ICs minimize the risk of breach of containment by flatly prohibiting activities like digging into the ground on or near the containment area. According to Winograd, traditional ICs declare “thou shall not do anything.”

While these prohibitive ICs reduce the risk of exposure to hazardous waste, they also make it difficult to redevelop the property. At Industri-Plex, Winograd and his colleagues came up with a number of creative ways for the ICs to allow development to move forward and protect human health and the environment at the same time.

Negotiating the ICs has taken considerable time. One issue to be addressed was that there were two groups of PRPs with conflicting interests. The generator PRPs favored restrictive ICs as protection from potential liability. The landowner PRPs wanted minimal ICs to encourage development. Add in EPA, Massachusetts, and Woburn, and, says Winograd, you have the parties doing “a dance together trying to figure out how to make things work to everyone’s advantage.”

The results of this effort are a set of interim ICs that regulate activities at the site while permanent ICs are being completed. The proposed permanent IC framework makes the current landowners generally responsible for their properties, which are monitored at various stages by EPA, Massachusetts, and the landowner PRPs. The developers can dig at the Industri-Plex site, but only if they follow the strict safety guidelines specified by the ICs. If the ICs are not followed, the federal government will step in with an arsenal of remedies. These innovative ICs at Industri-Plex allow development to transform the site from a symbol of protest to a symbol of pride.

Industri-Plex: From Community Protest to Community Pride

One source of pride is the new Regional Transportation Center. The center is named for Jimmy Anderson, a child who died of leukemia after being exposed to water contaminated by a second toxic waste site in the Woburn area. His mother was a plaintiff in the lawsuit portrayed in the book and movie, “A Civil Action.”

Having experienced such tragedy, it is not surprising that many in Woburn were initially hostile to building stores, offices, and public transportation facilities over another toxic waste site in their community. However, this negative perception has been turned around. When Target announced it was going to build a store on the site, Woburn Mayor Robert Dever declared that the new developments will make “people realize that the stigma is not forever and that communities can go forward.” The initial tour of the new Jimmy Anderson Regional Transportation Center was a major public event attended by Woburn’s mayor and a who’s who of local dignitaries.

Enforcement Steps In When ICs are Violated

The Industri-Plex ICs were put to the test when a subcontractor was caught operating heavy machinery within a sensitive area limited to manual digging. This violation resulted in the penetration of the geotextile membrane cap and the scattering of contaminated material over an area of the site.

Joseph LeMay, the Remedial Project Manager at Industri-Plex, first noticed the violation while visiting the site. All operations on the property were immediately shut down. Site attorney Winograd then “read them the riot act,” emphasizing the seriousness of the violation to the landowners, developer, and contractor.

The subcontractor was replaced and the developer was required to cover costs associated with contamination cleanup, equipment decontamination, environmental consultation, and site inspection. What’s more, EPA publicized the incident to the other PRPs so they would know that violating an IC would have expensive consequences. Bottom line, according to Winograd, is that “EPA takes this very seriously.”

The transformation of Industri-Plex was recognized at the Brownfields 2000 conference when the site won a Phoenix Award for outstanding land recycling achievements. Woburn Redevelopment Authority Chairman Jack Marlowe spoke for the city when he declared: “This award is the culmination of ten years of hard work. We have changed the image of Woburn dramatically.”

Today the community is proud of:

The Jimmy Anderson Regional Transportation Center, built to accommodate 2,400 parking spaces for commuter train service into Boston, a Park and Ride bus service, and shuttle service to Logan Airport.

A commercial and retail district, being developed by major corporations like Marriott, Genuity, and ArQule, including a Target department store and 750,000 square feet of office and hotel space.

A new highway link, the McKeown interchange, and a new connector road to Wilmington constructed to ease regional traffic congestion while providing access to new businesses at the former site.

A Proud Community says:

- “The transformation of this 245-acre site has restored Woburn’s pride, hope, and economic future.” — Woburn Mayor Robert Dever
- “We can be very proud. We did what people said couldn’t be done – we reused a top-10 toxic waste site.” — Massachusetts State Representative Carol Donovan
- “Everyone involved should be proud of their contribution toward development of the Industri-Plex site. The completion of this project marks a triumph in redevelopment of a severely contaminated site.” — Woburn Mayor Robert Dever
- “Industri-Plex is a model of how economic development and environmental protection go hand-in-hand.” — EPA Region 1 Administrator Mindy Lubber.



The Woburn Redevelopment Authority won the Phoenix Award for Outstanding Land Recycling Achievements at the Brownfields 2000 conference.

Reuse Has Its Rewards

The satisfaction for Winograd is personal: “We kept the community informed and they saw us as people who could help.” At public meetings, people came up to tell him what a good job EPA does. Winograd says he also feels satisfaction when “each project is finalized and you see the actual development. Watching old land being redeveloped into something tangible and economically stimulating to the community fulfills my personal, as well as the Agency’s, mission.”



The United States Environmental Protection Agency Silver Medal is presented to the Superfund Redevelopment Team. Among the medalists are Dan Winograd, Site Attorney, and Joe LeMay, Remedial Project Manager (back row, from left, respectively).

For More Information...

About the Superfund Redevelopment Initiative (SRI) in general: consult the SRI web site at

<http://www.epa.gov/superfund/programs/recycle/index.htm>

About tools such as EPA templates and forms for prospective purchaser agreements and comfort letters: consult the SRI web site at

<http://www.epa.gov/superfund/programs/recycle/forms.htm>

<http://www.epa.gov/superfund/programs/recycle/forms.htm#PPAs>

<http://www.epa.gov/superfund/programs/recycle/forms.htm#comfortletters>

About Industri-Plex and other successfully reused sites:

go to the Superfund Redevelopment Site Information Table which offers (by state and by site) Case Studies, One-Page Summaries, Success Stories, NPL Narratives, NPL Fact Sheets, Record of Decision Abstracts, and Maps at http://www.epa.gov/superfund/programs/recycle/site_tb1.htm#industri

About the benefits of site reuse: consult the SRI web site at

<http://www.epa.gov/superfund/programs/recycle/bensum.htm>

About SRI guidance and policy documents: go to

<http://www.epa.gov/superfund/programs/recycle/policy.htm>

or contact John Harris at harris.john@epa.gov or (703) 603-9075.